

### **REMARKS**

Claim 1 is amended above. New claim 27 is presented. Applicant respectfully requests reconsideration of this application.

#### **The rejection under 35 USC 101 can be withdrawn.**

The amendments to claim 1 clarify that the wheels that are the subject of the determination are the wheels associated with the drive member. Therefore, the determining is “tied to the conveyor” and one skilled in the art will clearly “know how to use the claimed invention.” The rejection can be withdrawn.

#### **The rejections under 35 USC 103 must be withdrawn.**

Applicant respectfully traverses the rejections of all claims based on the Examiner’s proposed modification of the *Kraft* reference based on the *Joosten* reference. That combination cannot be made and, even if it could, it does not provide a result that would establish a *prima facie* case of obviousness.

The *Kraft* reference does not teach what the Examiner contends. Without that, there is no *prima facie* case of obviousness. The Examiner contends that the *Kraft* reference has “at least one drive member (44) that follows a path around a plurality of wheels (38, 58).” There is nothing in the reference, however, that corresponds to a drive member that follows a path around the wheels 38 and 58 of the reference. What the Examiner considers the drive member 44 is a drive unit that is “mounted on the incline” (column 3, lines 45-46). No part of that drive unit follows a path around the wheels 38 and 58. As shown best in Figure 2, the wheels 38 are rollers that support the step chain 15 and the wheels 58 are rollers that support the steps. Neither of those wheels, nor the combination of them, establishes a path that the drive unit 44 would follow. Instead those wheels follow a path established, at least in part, by the truss structure of the escalator of the *Kraft*

reference as the steps and step chain move together.

Moreover, the drive unit 44 remains fixed on the incline of the escalator and does not follow any path established by the wheels 38 and 58. Given the association between the steps and the step chain and the relative positions of the wheels 38 and 58, it is impossible for the drive unit 44 to be considered to be following a path around those wheels.

The Examiner contends that the drive unit 44 causes the escalator steps and step chain to follow a path and, therefore, the drive unit follows the path. That is not a reasonable interpretation of the reference. Additionally, Applicant's claims are more specific than a generic recitation of a drive member that moves steps and a step chain. The claims require that the drive member "follows a path around a plurality of wheels." The drive unit 44 does not follow any path around the wheels 38, 58 of the *Kraft* reference (nor does anything else, for that matter because nothing moves around those wheels in a manner that would constitute a reasonable interpretation of following a path around those wheels).

Given that the *Kraft* reference does not teach what the Examiner suggests, there is no possible *prima facie* case of obviousness even if it were somehow possible to incorporate a rotary encoder of any kind from the *Saito* reference or any other reference, for that matter. There is no *prima facie* case of obviousness and the rejection must be withdrawn.

Further, there is no *prima facie case* of obviousness because there is no reason to make the proposed combination. The Examiner proposes to add a "rotary encoder" to determine if the wheels 38 and 58 are rotating at the same speed. Such an encoder would serve no purpose in the *Kraft* reference because the steps and step chain have to move together by virtue of the structure of the escalator of the reference. The steps and step chain are interconnected to always move together at the same speed. Therefore, the rollers 38 and 58 are always going to rotate based on the speed of

movement of the step chain and steps. There is not going to be any situation in which monitoring any potential difference in speed of rotation between the wheels 38 and 58 would provide any meaningful or useful information because they both always rotate based on the same speed of movement of the step chain together with the steps. Therefore, the legally required reason for making the proposed combination is completely missing and there is no *prima facie* case of obviousness.

Additionally, the *Joosten* reference does not teach anything that would in any way suggest determining whether wheels rotate at different speeds. The motion sensor of the *Joosten* reference does not determine any rotational speeds of any wheels of the conveyor in that reference. Instead, the motion sensor only determines linear motion of the steps or handrail, for example. While it is true that the motion sensor in that reference translates the linear motion into a rotary motion to count pulses, that does not in any way teach or suggest determining a speed of rotation of any wheel of the escalator in that reference. There is no “rotary encoder” that is used to determine any speed of rotation of any wheels of any portion of the escalator in the *Joosten* reference including any drive unit.

Without any teaching of a “rotary encoder” for determining a rotational speed of a wheel of the escalator in the *Joosten* reference, even the proposed combination (which cannot be made) does not provide a result that establishes a *prima facie* case of obviousness. There is nothing in either reference that teaches or suggests determining if wheels rotate at the same speed.

The rejections based on the proposed combination of the *Kraft* and *Joosten* references must be withdrawn.

This case is in condition for allowance.

Applicant believes that additional fees in the amount of \$50.00 are required for one additional claim in excess of twenty. A Credit Card Authorization Form is attached. The Commissioner is authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds for any additional fees or credit the account for any overpayment.

Respectfully submitted,

CARLSON, GASKEY & OLDS

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Dated: June 2, 2010